

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3700, Subsection(c), Oak Mortality Disease Control

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is intended to address the obligations of the California Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3700 is to provide authority for the State to mitigate the effects of oak mortality disease (sudden oak death) on the agricultural industry, which includes native tree stands, by establishing a program to arrest the artificial spread of the disease to additional areas; thereby protecting California's agricultural industry and environment. Subsection 3700(c), lists the articles and the commodities covered under this regulation.

The factual basis for the determination by the Department that the emergency amendment of Section 3700(c) was necessary is as follows:

The Department of Food and Agriculture has found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. The Department adopted Section 3700 to implement a program to arrest the artificial spread of the disease. Continued action is necessary to contain and minimize the destructive impact of this pest and disease at the earliest possible time. On April 9, 2004, the Administrator of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS) issued the first emergency order restricting the interstate movement of nursery stock from California nurseries located outside the area regulated under Section 3700. On April 22, 2004, USDA, APHIS issued a new order that replaced that issued on April 9, 2004. On April 23, 2004, USDA, APHIS issued a

clarification of its April 22, 2004 order. Through this last federal emergency order and its subsequent clarification, the USDA, APHIS identified additional plant species as regulated associated articles and as such, these associated articles are prohibited interstate movement from all California nurseries unless properly certified under the provision of the federal emergency order.

On August 5, 2004, the USDA, APHIS modified the list of associated articles listed as regulated by federal order and designated *Calluna vulgaris* (heath), *Drimys winteri* (Winter's bark), *Laurus nobilis* (bay laurel), and *Salix capea* (Kilmarnock willow) as regulated associated articles and deregulated *Vaccinium vitis-idea* (lingonberry). As a result, the State's regulation governing the intrastate movement of nursery stock was again amended to harmonize with this federal order.

On December 21, 2004, the USDA, APHIS issued a federal order restricting the interstate movement of nursery stock from California, Oregon, and Washington. Through this federal order, *Calluna vulgaris* (heath), *Photinia fraseri* (red tip or Fraser's photinia), and *Maianthemum racemosum* (= *Smilacina racemosa*, false Solomon's seal) were designated as host plants and *Fraxinus excelsior* (European ash), *Nothofagus oblique* (Roble beech), and *Viburnum x rhytidophylloides* (Alleghany or willowood viburnum) were designated as being regulated associated plants (nursery stock). Previously, *Calluna vulgaris* (heath) and *Maianthemum racemosum* (= *Smilacina racemosa*, false Solomon's seal) were listed as associated articles and there has been a formal scientific name change for false Solomon's seal from *Smilacina racemosa* to *Maianthemum racemosum*.

On August 3, 2005, the USDA, APHIS issued a new federal order restricting the interstate movement of nursery stock from California, Oregon and Washington. Through this federal order, *Castanea sativa* (sweet chestnut), *Fraxinus excelsior* (European ash), *Griselinia littoralis* (Griselinia), *Parrotia persica* (Persian Parrotia or iron tree), *Quercus falcata* (Southern red oak), *Quercus ilex* (Holm oak), *Syringa vulgaris* (lilac), and *Taxus baccata* (European yew) were designated as host plants and *Acer pseudoplatanus* (planetree maple), *Adiantum jordanii* (California maidenhair fern), *Calycanthus occidentalis* (spicebush), *Hamamelis mollis* (Chinese witch-hazel), *Magnolia stellata* (star magnolia), *Magnolia x loebneri* (Loebner magnolia), *Magnolia x soulangeana* (saucer magnolia), and *Taxus media* (yew) were designated as associated host plants.

On September 14, 2005, the USDA, APHIS again issued a new federal order restricting the interstate movement of nursery stock from California, Oregon, and Washington. Through this federal order, *Acer*

laevigatum (evergreen maple), *Adiantum aleuticum* (Western maidenhair fern), *Fraxinus latifolia* (Oregon ash), *Michelia doltsopa* (Michelia), *Osmorhiza berteroi* (sweet Cicely), *Quercus petraea* (sessile oak), *Torreya californica* (California nutmeg), and *Vancouveria planipetala* (Redwood ivy) are designated as associated host plants. As a result, it is necessary to harmonize the State's regulation governing the intrastate movement of hosts and associated articles (nursery stock) with this latest federal order. Without a parallel State regulation that is substantially the same as the federal domestic quarantine and related federal orders, the USDA cannot regulate less than the entire State.

Therefore, the Department made an emergency amendment to Section 3700(c) to continue to provide the necessary regulatory framework for a State program to continue to arrest the spread of this disease in compliance with the September 14, 2005, federal order.

The Department amended this regulation because it is necessary to continue to have authority for an established statewide program in order to arrest the artificial spread of the disease to additional areas and harmonize this regulation governing the intrastate movement of nursery stock with the latest federal order that governs the interstate movement of California nursery stock. Immediate amendment of this regulation was necessary to mitigate the effects of this disease on the agricultural industry, which includes native tree stands. Additionally, it was necessary to immediately amend this regulation to avoid more stringent federal restrictions being placed against the State to prevent the interstate movement of articles and commodities that may carry *Phytophthora ramorum*. Without the immediate implementation of this regulatory action, the USDA, APHIS may have considered the entire State to be infested with *Phytophthora ramorum*, rather than just the current 14 regulated counties. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California commodities by our international trade partners.

Specific facts and circumstances clearly also indicate that the spread of oak mortality disease presents a clear and imminent danger to property and, therefore, constitutes an emergency. The Department was, therefore, compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The emergency amendment of Section 3700(c) established *Acer laevigatum* (evergreen maple), *Adiantum aleuticum* (Western maidenhair fern), *Fraxinus latifolia* (Oregon ash), *Michelia doltsopa* (Michelia),

Osmorhiza berteroi (sweet Cicely), *Quercus petraea* (sessile oak), *Torreya californica* (California nutmeg), and *Vancouveria planipetala* (Redwood ivy) as associated host plants.

The emergency amendment of Section 3700(c) established eight new associated hosts that are covered by restrictions to prevent artificial spread of the pest to non-infested areas. To protect California's agricultural industry, it was necessary to immediately regulate movement of these new associated hosts and potential carriers that can transfer the pest from the infested area. Therefore, it was necessary to amend Section 3700(c) on an emergency basis.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3700(c) does not impose a mandate on local agencies or school districts, except that the agricultural commissioner of a county under regulation has a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the 14 affected county agricultural commissioners requested that when established as a new host or associated article by a federal order, Section 3700, subsection (c) be changed to reflect that.

The Department has also determined that the amended regulation will involve no additional costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs. The Department of Food and Agriculture has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

The Department is not aware of any additional cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed action. There was an ongoing program in place prior to this emergency amendment of the regulation. After consulting with the known affected individuals/businesses and/or the county agricultural commissioners in the regulated area, the program concluded there are no anticipated new economic impacts or newly affected parties due to this proposed action.

Therefore, the proposed action will not result in any new costs for compliance for individuals/businesses previously regulated in the 14 counties prior to this emergency amendment. Therefore, the cost impact of the amended regulation on a representative business is not expected to be significantly adverse.

Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the amendment of Section 3700:

E-mail dated October 7, 2005 from Vince Arellano to Stephen Brown.

“Phytophthora ramorum (sudden oak death, ramorum blight & die back): Revision of Associated Regulated Articles (nursery stock); Additions to APHIS List of Hosts and Plants Associated with *Phytophthora ramorum*,” dated September 14, 2005, and prepared by Richard L. Dunkle, Deputy Administrator, PPQ.

Facsimile transmission of a letter dated August 20, 2004 to Secretary A.G. Kawamura from David C. Frieders.

Facsimile transmission of a letter dated June 30, 2004 from Ronnie K. Eaton to Nick Condos.

Facsimile transmission of a letter dated June 30, 2004 to Dr. Dennis E. Mayhew from Steve Hajik.

Letter dated June 30, 2004 from David R. Whitmer to Dr. Dennis E. Mayhew.

Facsimile transmission of a letter dated June 30, 2004 to Dr. Dennis E. Mayhew from Stacy K. Carlsen.

Facsimile transmission of a letter dated June 30, 2004 to Dr. Dennis E. Mayhew from Edward P. Myer.

Letter dated June 28, 2004 from David W. Moeller to Dr. Dennis E. Mayhew.

Facsimile transmission of a letter dated June 28, 2004 to Dr. Dennis E. Mayhew from John Westoby.

Letter dated June 28, 2004 from Gail M. Raabe to Dr. Dennis E. Mayhew.

Letter dated June 25, 2004 from David Bengston to Dr. Dennis E. Mayhew.

Letter dated June 25, 2004 from Greg Van Wassenhove to Dr. Dennis E. Mayhew.

Letter dated June 25, 2004 from Susan Cohen to Dr. Dennis E. Mayhew.

Letter dated June 25, 2004 from Eric Lauritzen to Dr. Dennis E. Mayhew.

Letter dated June 24, 2004 from John E. Falkenstrom to Dr. Dennis E. Mayhew.